

ORIGINAL
FILED

MAR 19 2008

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

John Swenson (SBN 224110)
STEPTOE & JOHNSON LLP
2121 Avenue of the Stars
Suite 2800
Los Angeles, CA 90067
Phone: 310.734.3200
Fax: 310.734.3300
Email: jswenson@steptoe.com

Attorneys for Defendant Red Door Salons, Inc.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

E-filing

LISA KNIGHT and MARCIE DAVE, on
behalf of themselves and all others similarly
situated,

Plaintiffs,

vs.

RED DOOR SALONS, INC., an Arizona
Corporation and DOES 1 through 25,
inclusive,

Defendants.

No. 08

1520

(San Francisco County Superior Court
Case No. CGC-08-471683)

NOTICE OF REMOVAL PURSUANT
TO 28 U.S.C. §§ 1332(a), (d), 1441 and
1446

(DIVERSITY & CLASS ACTION
FAIRNESS ACT)

Action Filed: January 31, 2008

FILED

TO THE CLERK OF THE ABOVE-ENTITLED COURT AND PLAINTIFFS AND THEIR
ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that Defendant Red Door Salons, Inc. ("Defendant" or "Red
Door") hereby removes this action from the Superior Court of the State of California for the
County of San Francisco to the United States District Court for the Northern District of California,
pursuant to 28 U.S.C. §§ 1332(a), (d), 1441 and 1446. A short plain statement of the grounds for
removal follows:

STATEMENT OF JURISDICTION

1. This Court has original jurisdiction over this action under: 1) 28 U.S.C. § 1332(a)
(diversity jurisdiction); and 2) 28 U.S.C. § 1332(d) (The Class Action Fairness Act of 2005

1 ("CAFA")). 28 U.S.C. § 1332(a) grants district courts original jurisdiction over civil actions
2 between citizens of different states and the amount in controversy exceeds the sum of \$75,000,
3 exclusive of interest and costs. The CAFA grants district courts original jurisdiction over civil
4 class actions filed under federal or state law in which any member of a class of plaintiffs is a
5 citizen of a state different from any defendant and where the amount in controversy for the
6 putative class members in the aggregate exceeds the sum or value of \$5,000,000, exclusive of
7 interests and costs. As set forth below, this case meets all of the requirement for removal under
8 both 28 U.S.C. § 1332(a) and the CAFA and is timely and properly removed by the filing of this
9 Notice.

10 INTRADISTRICT ASSIGNMENT

11 2. Assignment to the San Francisco division of the United States District Court for the
12 Northern District of California is appropriate because this is a civil action which arises in the
13 County of San Francisco, California. See Civil L.R. 3-2(d); 3-5(b).

14 PLEADINGS, PROCESS, AND ORDERS

15 3. On or about January 31, 2008, Plaintiffs filed a Class Action Complaint against
16 Defendant in the Superior Court of the State of California for the County of San Francisco,
17 entitled *Lisa Knight, et al. v. Red Doors Salons, Inc., et al.*, Case No. CGC-08-471683
18 ("Complaint").

19 4. Plaintiffs' Complaint asserts eleven (11) causes of action: (1) unlawful wage
20 deductions; (2) compelled patronization; (3) failure to reimburse business expenses; (4) failure to
21 pay overtime compensation; (5) payment of secret wages; (6) failure to provide accurate wage
22 statements; (7) failure to pay wages for break periods; (8) failure to pay wages for meal periods;
23 (9) waiting time penalties; (10) illegal non-competition agreements; and (11) unfair and unlawful
24 business practices.

25 5. A copy of the Summons, Civil Case Cover Sheet, Complaint, Notice of Case
26 Management Conference and Civil ADR Program Packet were served on Red Door via its Agent
27 for Service of Process, CT Corporation Systems, on February 19, 2008. This is the first date upon
28

1 which Defendants received a copy of the Complaint. True and correct copies of the documents
2 served on Defendants are attached hereto as Exhibits A through E.

3 6. Because Red Door is the only named Defendant and the only Defendant served,
4 there are no other consents required for removal.

5 7. No further related proceedings have been heard in San Francisco Superior Court.

6 8. This Notice is timely in that it has been filed within thirty (30) days of Plaintiffs'
7 service of the Complaint.

8 **JURISDICTION PURSUANT TO TRADITIONAL DIVERSITY OF CITIZENSHIP**

9 9. This action is a civil action over which this Court has original jurisdiction under 28
10 U.S.C. § 1332, and is one which may be removed to this Court by Defendant pursuant to the
11 provisions of 28 U.S.C. § 1441(a) in that it is a civil action between citizens of different states and
12 the amount in controversy exceeds the sum of \$75,000, exclusive of interest and costs.

13 10. During the entire course of their employment with Defendant, Plaintiffs were
14 employed in the State of California. Declaration of Susan Haas ("Haas Declaration") at ¶ 4,
15 attached hereto as Exhibit F. Plaintiff Lisa Knight provided Red Door with addresses located in
16 Concord and San Francisco, California as the location at which she elected to receive
17 communications from Red Door during her employment. *Id.* Plaintiff Marcie Dave provided Red
18 Door with an address located in Millbrae, California as the location at which she elected to receive
19 communications from Red Door during her employment. *Id.* Plaintiffs are therefore citizens of
20 the State of California. *See* 28 U.S.C. § 1332(a)(1) (an individual is a citizen of the state in which
21 he or she is domiciled).

22 11. Red Door was at the time of the filing of this action, and remains, a citizen of the
23 State of Arizona, in that it was and continues to be a corporation incorporated under the laws of
24 the State of Arizona with its principal place of business in Arizona. Haas Declaration at ¶ 3. Red
25 Door is a citizen of the State of Arizona for diversity purposes. Red Door is not a citizen of the
26 State of California. 28 U.S.C. § 1332(c)(1).

12. Defendants Does 1 through 25, inclusive, are fictitious. The Complaint does not set forth the identity or status of any said fictitious defendants. The citizenship of defendants sued under fictitious names should be disregarded for purposes of determining diversity jurisdiction and cannot destroy the diversity of citizenship between the parties in this action. *Newcombe v. Adolf Coors Co.*, 157 F.3d 686, 690-91 (9th Cir. 1998).

13. Plaintiffs' Complaint is silent as to the total amount in controversy. As such, Defendant needs only to establish by a preponderance of evidence that the amount in controversy in Plaintiffs' Complaint exceeds the jurisdictional minimum. *See e.g., Sanchez v. Monumental Life Ins. Co.*, 102 F.3d 398, 404 (9th Cir. 1996).

14. Defendant denies Plaintiffs' claims of wrongdoing and denies their requests for relief thereon. However, the amount in controversy in Plaintiffs' Complaint, including the total amount of wages, penalties, interest, attorneys' fees, injunctive relief and other monetary relief, is more likely than not in excess of \$75,000.00, calculated as follows:

a. Plaintiff Lisa Knight ("Knight") was employed as an aesthetician with Red Door at its salon located at 126 Post Street in the City and County of San Francisco, California ("San Francisco Salon") from February 1999, until July 2007. Complaint at ¶¶ 1, 2.

b. In 2004, Knight's gross income was approximately \$21,557.38. In 2005, Knight's gross income was approximately \$21,054.56. In 2006, Knight's gross income was approximately \$24,940.45. Haas Declaration at ¶ 5. This equates to an average annual gross income of approximately \$22,517.46 ($\$21,557.38 + \$21,054.56 + \$24,940.45 / 3 = \$22,517.46$). This equates to an average weekly wage of approximately \$433.03 ($\$22,517.46 / 52 = \433.03). This equates to an average daily wage of approximately \$86.61 ($\$433.03 / 5 = \86.61). This equates to an average hourly wage of approximately \$10.82 ($\$86.61 / 8 = \10.82).

- 1 c. In Counts One, Two, Three and Eleven of the Complaint, Knight alleges that
2 Defendants "regularly deducted" amounts from her wages violation of
3 California Labor Code §§ 221, 450, 2802, and California Business and
4 Professions Code § 17200. Knight will likely claim that these claims are
5 governed by a four-year statute of limitations. *See* Cal. Bus. & Prof. Code §
6 17208.¹ Defendant denies Plaintiffs' claims. Nevertheless, assuming the
7 validity of Plaintiffs' allegations, and assuming that \$50 was improperly
8 deducted from each week of Knight's pay, the amount in controversy for these
9 claims is approximately \$10,400 (\$50.00 x 208 weeks = \$10,400).
- 10 d. In Count Four of the Complaint, Knight seeks reimbursement for wages and
11 overtime allegedly worked but not recorded or paid by Defendant. Knight
12 claims that "by failing to compensate Plaintiffs and the Class at a rate of one-
13 and-one-half (1½) times the regular rate of pay for work performed above eight
14 (8) hours in a workday or above forty (40) hours in a workweek, Defendants
15 violated California law." Complaint at ¶ 46. This claim is governed by a three-
16 year statute of limitations. *See* Cal. Labor Code §§ 338(a), 1194. Defendant
17 denies Plaintiffs' claims. Nevertheless, assuming the validity of Plaintiffs'
18 allegations, and assuming Knight claims she was not compensated for five (5)
19 overtime hours each week, the amount in controversy for this claim is
20 approximately \$12,659.40 (\$16.23 x 5 hours x 156 weeks = \$12,659.40).
- 21 e. In Count Six of the Complaint, Knight alleges entitlement to penalties for
22 violations of California Labor Code § 226(a) pertaining to Defendant's alleged
23 failure to provide correct and accurate itemized wages statements. Complaint
24

25 ¹ In Count Five of the Complaint, Plaintiffs claim that Defendant "represented to Plaintiffs and each
26 member of the Class that they were paying proper overtime to the Plaintiffs and members of the Class,
27 while actually paying Plaintiffs and members of the Class less than the rate that was owed." Complaint at
28 ¶ 50. Plaintiffs do not allege any distinct injury as the result of this alleged conduct. As a result, this claim
is not considered in Defendant's calculation of the amount in controversy.

1 at ¶ 55. The Labor Code provides that any employer “who violates subdivision
2 (a) of Section 226 shall be subject to a civil penalty in the amount of two
3 hundred fifty dollars (\$250) per employee per violation in an initial citation and
4 one thousand dollars (\$1,000) per employee for each violation in a subsequent
5 citation.” Cal. Labor Code §226.3. This claim is governed by a one-year
6 statute of limitations and a \$4,000 cap on damages, per employee. *See*
7 *Blackwell v. Skywest Airlines, Inc.*, 245 F.R.D. 453, 462 (S.D. Cal. 2007); Cal.
8 Labor Code § 226(e). During her employment at Red Door, Knight was paid
9 bi-weekly. Haas Declaration at ¶ 5. Defendant denies Plaintiffs’ allegations.
10 Nevertheless, assuming the validity of Plaintiffs’ allegations, the amount in
11 controversy for this claim exceeds the \$4,000 statutory cap (24 payments x
12 \$250 = \$6,000).

13 f. In Count Seven of the Complaint, Knight alleges damages for missed rest
14 periods pursuant to California Labor Code § 226.7 and Wage Order 2-2001.
15 Complaint ¶ 60. The Labor Code provides for one hour of additional pay, as a
16 penalty, for each workday that a rest period is not permitted. Plaintiffs will
17 likely argue that this claim is governed by a three-year statute of limitations.
18 *See White v. Starbucks Corp.*, 497 F.Supp.2d 1080, 1085 (N.D. Cal. 2007).
19 Defendant denies Plaintiffs’ claims. Nevertheless, assuming the validity of
20 Plaintiffs’ allegations, and assuming the alleged conduct occurred on three (3)
21 workdays in each work week, the amount in controversy for this claim is
22 approximately \$5,063.76 (\$10.82 x 3 hours x 156 weeks = \$5,063.76).

23 g. In Count Eight of the Complaint, Knight alleges claims for missed meal periods
24 pursuant to California Labor Code § 226.7 and Wage Order 2-2001. The Labor
25 Code provides for one hour of additional pay, as a penalty, for each workday
26 that a meal period is not provided. Plaintiffs will likely argue that this claim is
27 governed by a three-year statute of limitations. *See White v. Starbucks Corp.*,

1 497 F.Supp.2d 1080, 1085 (N.D. Cal. 2007). Defendant denies Plaintiff's
2 claims. Nevertheless, assuming the validity of Plaintiffs' allegations, and
3 assuming the alleged conduct occurred on three (3) workdays in each work
4 week, the amount in controversy for this claim is approximately \$5,063.76
5 ($\$10.82 \times 3 \text{ hours} \times 156 \text{ weeks} = \$5,063.76$).

6 h. In Count Nine of the Complaint, Knight seeks waiting time penalties under
7 California Labor Code § 203, which provides that wages continue at an
8 employee's daily rate of pay until the final wages are paid, or an action to
9 recover them is commenced, up to a maximum of 30 days. *See Mamika v.*
10 *Barca*, 68 Cal. App. 4th 487, 493 (1998) (providing penalty under § 203 as the
11 "calculation of a daily wage rate, which can then be multiplied by the number
12 of days of nonpayment, up to 30 days."). Defendant denies Plaintiffs' claims.
13 Nevertheless, assuming the validity of Plaintiffs' allegations, and assuming
14 Plaintiffs prevail on this claim, the amount of controversy for this claim is
15 approximately \$2,589.30 ($\$86.61 \times 30 \text{ days} = \$2,589.30$).

16 i. In Count Ten of the Complaint, Knight alleges that she signed a written
17 agreement with Defendant stating: "For six (6) months after the termination of
18 your employment with the Company for whatever reason, you shall not directly
19 or indirectly render hair, beauty, nail, or other services ordinarily provided by a
20 Company Spa/salon, to or for any person, firm, corporation (including self-
21 employment) directly or indirectly involved in the provision of such services
22 within a 5 mile radius from the home spa where you were employed, unless
23 written consent by the Company is granted." Complaint at ¶ 72. Knight
24 alleges that this agreement violates California Business and Professions Code §
25 16600, and requests declaratory and injunctive relief. Complaint at ¶¶ 73-74.
26 When plaintiffs sue for declaratory and injunctive relief based upon the
27 existence of a non-competition agreement, courts consider the amount of

revenue generated by the affected employee in determining whether the “amount in controversy” exceeds the relevant jurisdictional minimum. *See e.g., Mahoney v. DePuy*, 2007 U.S. Dist. LEXIS 85856, *12-13 (E.D. Cal. Nov. 8, 2007). The amount of revenue Knight generated in 2007 was approximately \$44,250.47. Haas Declaration at ¶ 5. Defendant denies Plaintiffs’ claims. Nevertheless, assuming the validity of Plaintiffs’ allegations, and assuming Plaintiffs prevail on this claim, the amount of controversy for this claim is approximately \$44,250.47.

j. Based on the amounts in controversy for Counts One, Two, Three and Eleven [\$10,400.00]; Four [\$12,659.00]; Six [\$4,000.00]; Seven [\$5,063.76]; Eight [\$5,063.76]; Nine [\$2,598.30]; and Ten [\$44,250.47], the amount in controversy for Knight’s claim is approximately \$84,035.29, which is over the jurisdictional amount required for removal under 28 U.S.C. § 1332(a).

k. Knight also seeks to recover her reasonable attorneys’ fees. Complaint at ¶ 80. It is well-settled that, in determining whether a complaint meets the amount in controversy requirement, the Court should consider the aggregate value of claims for damages as well as attorneys’ fees. *See e.g., Galt G/S v. JSS Scandinavia*, 142 F.3d 1150, 1155-56 (9th Cir. 1998). Assuming that Knight’s attorneys’ fees will constitute 25% of the amount in controversy for her claims, that amount would equal approximately \$21,000, further exceeding the \$75,000 threshold set forth in 28 U.S.C. § 1332(a).

15. The preponderance of the evidence is that the amount in controversy sought by the facial allegations of Plaintiffs’ Complaint is greater than the jurisdictional amount of \$75,000.00. Thus, removal of this action is appropriate.

///

///

///

JURISDICTION PURSUANT TO THE CLASS ACTION FAIRNESS ACT

16. The Class Action Fairness Act of 2005, 28 U.S.C. § 1332(d)(2)², as amended, provides federal jurisdiction over any class action with at least 100 members, as follows:

The district courts shall have original jurisdiction of any civil action in which the matter in controversy exceeds the sum or value of \$5,000,000, exclusive of interests and costs, and is a class action in which –

(A) any member of a class of plaintiffs is a citizen of a State different from any defendant.

17. This is a civil action over which this Court also has original jurisdiction under 28 U.S.C. § 1332(d) and one that may be removed to this Court by Defendant pursuant to 28 U.S.C. §§ 1441(b) and 1446.

18. This action has been styled as a class action pursuant to California Code of Civil Procedure § 382. Complaint at ¶ 19. Plaintiffs seek to represent: “All hair stylists, aestheticians, masseuses, or any similar commissioned worker, employed by Defendants to work at [Red Door] within the applicable statute of limitations period through the date of this action’s final disposition.” Complaint at ¶ 18.

19. Defendant has employed approximately 79 different “hair stylists, aestheticians, masseuses, or any similar commissioned workers” at Red Door’s San Francisco Salon since 2004. Haas Declaration at ¶ 5. Defendant has employed over 100 different “hair stylists, aestheticians, masseuses, or any similar commissioned workers” in the State of California since 2004. *Id.*

20. As set forth above, Plaintiffs are citizens of the State of California and Defendant is a citizen of the State of Arizona. Accordingly, Plaintiffs are citizens of a state different from the Defendants.

21. Plaintiffs’ Complaint is silent as to the total amount in controversy. As such, Defendant needs only to establish by a preponderance of evidence that the amount in controversy

² None of the exceptions set forth in 28 U.S.C. § 1332(d) apply to the instant action.

1 in Plaintiffs' Complaint exceeds the jurisdictional minimum. *See e.g., Sanchez v. Monumental*
 2 *Life Ins. Co.*, 102 F.3d 398, 404 (9th Cir. 1996).

3 22. Plaintiffs allege that their claims are typical of the claims of each putative class
 4 member. Complaint at ¶ 21. Assuming that the amount in controversy regarding Knight's claims
 5 is "typical" of the claims of each member of the putative class, and based upon the calculations set
 6 forth above, the total amount in controversy for the members of the putative class, excluding
 7 attorneys' fees is approximately \$8,403,529 (\$84,035.29 x 100 members = \$8,403,529).

8 23. As a result, although Defendant denies Plaintiffs' claims for wrongdoing and
 9 denies their requests for relief thereon, based upon the factual allegations in Plaintiffs' Complaint
 10 and assuming, *arguendo*, Plaintiffs were able to prove these allegations, the total amount in
 11 controversy sought by Plaintiffs and the other putative class members is in excess of \$5 million,
 12 exclusive of interest and costs, plus attorneys' fees. Removal under the Class Action Fairness Act
 13 is therefore appropriate.

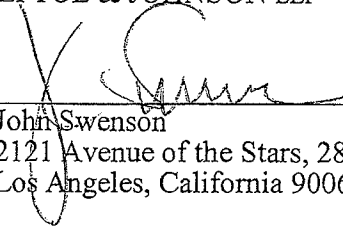
14 NOTICE TO PLAINTIFFS

15 24. Contemporaneously with the filing of this Notice of Removal in the United States
 16 District Court for the Northern District of California, written notice of such filing will be served
 17 on Plaintiffs' counsel of record. In addition, a copy of this Notice of Removal will be filed with
 18 the Clerk of the Court for San Francisco County Superior Court.

19 WHEREFORE, having provided notice as required by law, the above-entitled action
 20 should be removed from the San Francisco County Superior Court.

21 RESPECTFULLY SUBMITTED this 19th day of March, 2008.

22 STEPTOE & JOHNSON LLP

23 By 
 24 John Swenson
 25 2121 Avenue of the Stars, 28th Floor
 26 Los Angeles, California 90067

27 Attorneys for Defendant

01/31/2008 14:50

4153 552

MOSS&HOUGH

PAGE 04/21

2/19/08 9:00 AM

**SUMMONS
(CITACION JUDICIAL)****NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):**RED DOOR SALONS, INC., an Arizona Corporation and DOES 1
through 25, inclusive,**YOU ARE BEING SUED BY PLAINTIFF:****(LO ESTÁ DEMANDANDO EL DEMANDANTE):**LISA KNIGHT and MARCIE DAVE, on behalf of themselves and those
similarly situated.

SUM-100

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.courtinfo.ca.gov/selfhelp/espanol/), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia. Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.courtinfo.ca.gov/selfhelp/espanol/) o poniéndose en contacto con la corte o el colegio de abogados locales.

The name and address of the court is:

(El nombre y dirección de la corte es):

Superior Court of California, County of San Francisco
400 McAllister Street
San Francisco, CA 94102CASE NUMBER
(Número del Caso):

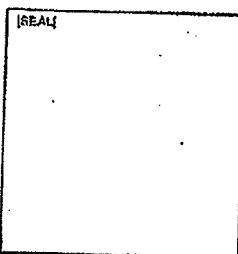
08-471683

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

Gary E. Moss, Esq., Mary Patricia Hough, Esq., Derek M. Thomas, Esq.,
MOSS & HOUGH, 6000 San Ness Avenue, Suite 2030, San Francisco, CA 94102-6319 (415) 399-1110DATE:
(Fecha)

JAN 31 2008

GORDON PARKER, CLERK, by CHRISTINA E. BAURSTA, Deputy
(Secretario)(For proof of service of this summons, use Proof of Service of Summons (Form POS-010).)
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).**NOTICE TO THE PERSON SERVED: You are served**

1. ☐ as an individual defendant;
2. ☐ as the person sued under the fictitious name of (specify):

3. ☒ on behalf of (specify):

under:

- | | |
|--|---|
| <input checked="" type="checkbox"/> CCP 416.10 (corporation) | <input type="checkbox"/> CCP 416.80 (minor) |
| <input type="checkbox"/> CCP 416.20 (defunct corporation) | <input type="checkbox"/> CCP 416.70 (conservatee) |
| <input type="checkbox"/> CCP 416.40 (association or partnership) | <input type="checkbox"/> CCP 416.90 (authorized person) |
| <input type="checkbox"/> other (specify): | |

4. ☐ by personal delivery on (date):Form Adopted for Mandatory Use
Judicial Council of California
SUM-100 [Rev. January 1, 2004]

SUMMONS

Page 1 of 1
Code of Civil Procedure §§ 412.20, 405
Amended by the Judicial Council of California

10356647 lit - 1/31/2008 2:59:29 PM

EXHIBIT

A

Exhibit "A"
Page 11

CT CORPORATION
A WoltersKluwer Company

**Service of Process
Transmittal**

02/19/2008

CT Log Number 513101888



TO: Gabriela Macko, Tax Manager
Elizabeth Arden Salons, Inc.
3822 E University Dr, Ste 5
Phoenix, AZ 85034-

RE: Process Served in California

FOR: Red Door Salons, Inc. (Domestic State: AZ)

ENCLOSED ARE COPIES OF LEGAL PROCESS RECEIVED BY THE STATUTORY AGENT OF THE ABOVE COMPANY AS FOLLOWS:

TITLE OF ACTION: Lisa Knight and Marcie Dave, etc., Pltfs. vs. Red Door Salons, Inc, etc., et al. Dfts.
DOCUMENT(S) SERVED: Summons, Cover Sheet, Complaint, Notice, Attachment, Stipulation Form, Case Management Statement
COURT/AGENCY: San Francisco County- San Francisco, Superior Court, CA
Case # CGC08471683
NATURE OF ACTION: Employee Litigation - For unlawful wage deductions, for violation of labor, for failure to reimburse business expenses and failure to pay overtime compensation
ON WHOM PROCESS WAS SERVED: C T Corporation System, Los Angeles, CA
DATE AND HOUR OF SERVICE: By Process Server on 02/19/2008 at 09:00
APPEARANCE OR ANSWER DUE: Within 30 days after service - file written response // 7-3-08 at 9:00 a.m. - Case Management Conference
ATTORNEY(S) / SENDER(S): Gary E. Moss
Moss & Though
601 Van Ness Ave
San Francisco, CA 94102
415-399-1110
ACTION ITEMS: SOP Papers with Transmittal, via Fed Ex 2 Day , 791003260380
Email Notification, Gabriela Macko gmacko@rdspas.com
SIGNED: C T Corporation System
PER: Nancy Flores
ADDRESS: 818 West Seventh Street
Los Angeles, CA 90017
TELEPHONE: 213-337-4615

Page 1 of 1 / JD

Information displayed on this transmittal is for CT Corporation's record keeping purposes only and is provided to the recipient for quick reference. This information does not constitute a legal opinion as to the nature of action, the amount of damages, the answer date, or any information contained in the documents themselves. Recipient is responsible for interpreting said documents and for taking appropriate action. Signatures on certified mail receipts confirm receipt of package only, not contents.

Sandy L. 2/20/08

Exhibit "A"
Page 12

01/31/2008 14:58 4153991552

MOSS&HOUGH

PAGE 02/21

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Gary E. Moss, Esq. SBN 104542 // Mary Patricia Hough SBN 104542 Derek Thomas, Esq. SBN 248897 MOSS & HOUGH 601 Van Ness Avenue, Suite 2030, San Francisco, CA 94102 TELEPHONE NO.: 415/399-1110 FAX NO.: 415/399-1552		CM-010 FOR COURT USE ONLY <div style="text-align: center;"> ENDORSED FILED San Francisco County Superior Court JAN 31 2008 GORDON PARKER, Clerk BY: <u>CRISTINA E. BAUTISTA</u> Deputy Clerk </div>	
ATTORNEY FOR (Name): SUPERIOR COURT OF CALIFORNIA, COUNTY OF San Francisco STREET ADDRESS: 400 McAllister Street MAILING ADDRESS: same CITY AND ZIP CODE: San Francisco, CA 94102 BRANCH NAME:		CASE NAME: Lisa Knight & Marcie Dave v. Red Door Salons, Inc., et al.	
CIVIL CASE COVER SHEET <input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000) <input type="checkbox"/> Limited (Amount demanded is \$25,000 or less)		Complex Case Designation <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)	
Items 1-6 below must be completed (see instructions on page 2).		CASE NUMBER: 0808-471683 JUDGE: DEPT:	

1. Check one box below for the case type that best describes this case:

Auto Tort <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) Other PIP/DWD (Personal Injury/Property Damage/Wrongful Death) Tort <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PIP/DWD (23) Non-PIP/DWD (Other) Tort <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PIP/DWD tort (35) Employment <input type="checkbox"/> Wrongful termination (35) <input checked="" type="checkbox"/> Other employment (15)	Contract <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) Real Property <input type="checkbox"/> Eminent domain/inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) Unlawful Detainer <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (36) Judicial Review <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) Enforcement of Judgment <input type="checkbox"/> Enforcement of judgment (20) Miscellaneous Civil Complaint <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) Miscellaneous Civil Petition <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
---	--	---

2. This case ☒ is ☐ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:

a. <input type="checkbox"/> Large number of separately represented parties b. <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve c. <input checked="" type="checkbox"/> Substantial amount of documentary evidence	d. <input type="checkbox"/> Large number of witnesses e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court f. <input checked="" type="checkbox"/> Substantial postjudgment judicial supervision
---	---

3. Remedies sought (check all that apply): a. ☒ monetary b. ☐ nonmonetary; declaratory or injunctive relief c. ☐ punitive

4. Number of causes of action (specify): **Eleven (11)**

5. This case ☒ is ☐ is not a class action suit.

6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: January 31, 2008
 Mary Patricia Hough
 (TYPE OR PRINT NAME) _____ (SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

• Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.

• File this cover sheet in addition to any cover sheet required by local court rule.

• If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.

• Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

CIVIL CASE COVER SHEET

Form Approved for Mandatory Use
 Judicial Council of California
 CM-010 (Rev. July 1, 2007)

Page 1 of 2
 Cal. Rules of Court, rules 3.210, 3.220, 3.400-3.403, 3.740;
 Cal. Standards of Judicial Administration, std. 3.10
 www.courtinfo.ca.gov
 American LegalNet, Inc.
 10356633

EXHIBIT B

Exhibit "B"
Page 13

01/31/2008 14:58 4153991552

MOSS&HOUGH

PAGE 06/21

1 MICHAEL VON LOEWENFELDT (178665)
 2 MICHAEL NG (237915)
 3 KERR & WAGSTAFFE, LLP
 4 100 Spear Street, Suite 1800
 5 San Francisco, CA 94105-1528
 6 Telephone: (415) 371-8500
 7 Facsimile: (415) 371-0500

8 GARY E. MOSS (43002)
 9 MARY PATRICIA HOUGH (104542)
 10 DEREK M. THOMAS (248897)
 11 LAW OFFICES OF MOSS & HOUGH
 12 601 Van Ness Avenue, Suite 2030
 13 San Francisco, CA 94102
 14 Telephone: (415) 399-1110
 15 Facsimile: (415) 399-1552

Attorneys for Plaintiffs

LISA KNIGHT, and MARCIE DAVE

on behalf of themselves and those similarly situated,

IN THE SUPERIOR COURT OF CALIFORNIA
 FOR THE COUNTY OF SAN FRANCISCO
 (UNLIMITED JURISDICTION)

LISA KNIGHT and MARCIE DAVE, on behalf
 of themselves and those similarly situated,

Plaintiffs,

vs.

RED DOOR SALONS, INC., an Arizona
 Corporation and DOES 1 through 25, inclusive,

Defendants.

CLASS ACTION

Case No. _____

COMPLAINT

JURY TRIAL DEMANDED

BY FAX

Plaintiffs LISA KNIGHT and MARCIE DAVE allege, on behalf of themselves and a
 Class of those similarly situated, as follows:

PARTIES

1. Defendant RED DOOR SALONS, INC., is a corporation that owns and operates a
 salon and day spa doing business under the fictitious name Elizabeth Arden Red Door Spa

KERR
 WAGSTAFFE
 LLP

1

Complaint

SAN FRANCISCO COUNTY SUPERIOR COURT

EXHIBIT C

Exhibit "C"
 Page 14

1 (hereinafter referred to as "RDS"). RDS is located at 126 Post Street, in the City and County of
 2 San Francisco, California.

3 2. Plaintiffs LISA KNIGHT and MARCIE DAVE are former employees of
 4 Defendant. KNIGHT was employed as an aesthetician at RDS beginning in February 1999.
 5 KNIGHT resigned her employment in July 2007. Plaintiff DAVE was employed by RDS as a
 6 hair stylist from January 9, 2007 through and including September 27, 2007. KNIGHT and
 7 DAVE bring this action on behalf of themselves and all others similarly situated.

8 3. The true names and capacities, whether individual, corporate, associate or
 9 otherwise, of defendants DOES 1 through 25, inclusive, are unknown to Plaintiffs, who therefore
 10 sue these defendants by fictitious names pursuant to Code of Civil Procedure § 474. Plaintiffs
 11 further allege that each of these fictitious defendants is in some manner responsible for the acts
 12 and occurrences herein set forth. Plaintiffs will amend this complaint to show these defendants'
 13 true names and capacities when ascertained, as well as the manner in which each fictitious
 14 defendant is responsible.

15 4. Plaintiffs are informed and believe and on that basis allege, that each of the
 16 defendants named in this complaint was an agent, servant, employee, co-conspirator, and/or joint
 17 venturer of each of the remaining defendants, and was at all times acting within course and scope
 18 of said agency, service, employment, conspiracy and/or joint venture.

19 5. Defendants, and each of them, aided and abetted, encouraged and rendered
 20 substantial assistance in accomplishing the wrongful conduct complained of herein. In taking
 21 action, as particularized herein, to aid and abet and substantially assist the commission of these
 22 wrongful acts complained of, each of the defendants acted with an awareness of his/her/its
 23 primary wrongdoing and realized that his/her/its conduct would substantially assist the
 24 accomplishment of the wrongful conduct and wrongdoing.

25 VENUE

26 6. Venue is proper in the County of San Francisco because obligations and liabilities
 27 that are the basis of this action arose in San Francisco County.

28 //

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

GENERAL ALLEGATIONS

7. Plaintiff KNIGHT was employed as an aesthetician by RDS. In that capacity, her primary duty was to provide skin care and hair removal services to clients. KNIGHT was classified as an employee and paid on a commission basis. KNIGHT's position was not exempt from the overtime requirements of California law or any other provisions of the California Labor Code.

8. Plaintiff DAVE was employed as a hair stylist by RDS. In that capacity, her primary duty was to provide hair styling, coloring and related hair care services to RDS clients. DAVE was classified as an employee and paid on a commission basis. DAVE's position was not exempt from the overtime requirements of California law or any other provisions of the California Labor Code.

9. Plaintiffs KNIGHT and DAVE were paid an hourly wage as a draw against commissions. The price customers paid for Plaintiffs' services was set by Defendants. Upon hire, Plaintiffs were promised a set percentage of that price as a commission. The commission percentages promised to Plaintiffs were set at 33% and 40% respectively. Plaintiffs' primary duties were to perform services for customers, not to sell products. However, Plaintiffs were also paid a commission, ranging from 5% to 10%, on skin care, beauty and nail products purchased from the spa by their customers.

10. During Plaintiffs' employment, Defendants regularly and unlawfully deducted amounts from Plaintiffs' wages to cover Defendants' own overhead and business expenses. Plaintiffs' commissions were not paid on the price of the service but on a reduced price, referred to by Defendants as a "commissionable price." Defendants did not provide Plaintiffs with a breakdown or written explanation for the reduced service price, however, the deductions were, according to Defendants for:

a. The cost of "assistant charges," i.e., Defendants forced Plaintiff to pay for the cost of other employees hired by Defendants.

b. For the "cost of materials," which included the products Plaintiffs were required to use as part of their employment. For example, when Plaintiff

1 KNIGHT performed hair removal, she was assessed a charge for the wax
 2 she used in performing the service. When Plaintiff DAVE colored hair,
 3 she was charged for the tint.

- 4 c. Defendants deducted unspecified sums for marketing;
- 5 d. Defendants deducted unspecified sums for benefits (without defining what
- 6 the benefits were for); and
- 7 e. Defendants deducted unspecified sums for operating expenses.

8 11. Plaintiffs are informed and believe and allege thereon that Defendants applied
 9 similar policies and deductions uniformly to all stylists, aestheticians and masseuses employed
 10 by Defendants at RDS, and have done so consistently since at least 2003.

11 12. In addition, Plaintiffs were required to work on a schedule set by Defendants and
 12 were usually required to stay at work for all scheduled hours whether or not they had customer
 13 appointments. Plaintiffs were required to come to work approximately 15-20 minutes before the
 14 beginning of each scheduled shift to prepare their work areas. Plaintiffs were also required to
 15 attend meetings and classes in addition to their scheduled work hours. Plaintiffs, however, were
 16 not paid the proper amount of overtime for the periods when they were required to work more
 17 than eight hours a day in a workday or 40 hours in a work week. Defendants failed to keep
 18 proper time records, discouraged "early" clocking in, and therefore often failed to capture the
 19 first 15-20 minutes of work performed. Defendants also unlawfully and inaccurately calculated
 20 Plaintiffs' overtime pay based on the hourly rate of plaintiffs' draw against commission, rather
 21 than including plaintiffs' commission income in the "regular rate" calculation as required by
 22 California law.

23 13. Plaintiffs are informed and believe and allege thereon that Defendants similarly
 24 failed to pay overtime compensation at the correct rate to all stylists, aestheticians and masseuses
 25 employed by Defendants at RDS and have done so consistently since at least 2003.

26 14. Plaintiffs and other employees at RDS were sometimes required to work without
 27 rest and or meal breaks as provide by IWC Wage Order No. 2-2001 (11)-(12). Defendants
 28 //

1 failed, however, to pay Plaintiffs or any other employees for these missed breaks and meals as
2 required by law.

3 15. Plaintiffs and other employees of RDS were required to enter into written
4 agreements which, in clear violation of California law, purport to prohibit Plaintiffs and others
5 from competing with RDS during and after their employment by RDS.

6 16. Plaintiffs bring this action on behalf of themselves and all other persons who
7 were, are or will be employed by Defendants as stylists, aestheticians and masseuses or any other
8 similarly commissioned positions at RDS, within the relevant statute of limitations period,
9 (hereinafter "the Class").

10 17. Plaintiffs, on behalf of themselves and the Class, seek compensation for all
11 improperly withheld wages, unreimbursed business expenses, missed meals and rest breaks, and
12 under-compensated overtime work required or suffered or permitted by Defendants; injunctive
13 and declaratory relief; liquidated and/or other damages; and penalties as permitted by law;
14 interest; attorneys' fees and costs.

15 CLASS ACTION ALLEGATIONS

16 18. Plaintiffs bring this class action on behalf of themselves and the following
17 ascertainable class (hereinafter "the Class") of similarly situated persons:

18 All hair stylists, aestheticians, masseuses, or any similar
19 commissioned worker, employed by Defendants to work at RDS
20 within the applicable statute of limitations period through the date
of this action's final disposition.

21 19. This action is brought pursuant to Code of Civil Procedure § 382.

22 20. Plaintiffs are informed and believe, and on that basis allege, that members of the
23 Class are so numerous that joinder of all members is impracticable. While the exact number of
24 class members is unknown to Plaintiffs at this time and can only be ascertained through
25 discovery, Plaintiffs believe that there are more than fifty members of the Class.

26 21. Plaintiffs' claims are typical of the claims of the Class, because Plaintiffs and all
27 class members sustained damages that arise out of Defendants' same pattern and practice of
28 making unlawful wage deductions, failing to reimburse for expenses, failing to pay proper

1 overtime premium compensation, failing to provide proper rest and meal periods as required by
 2 California law, failing to provide proper wage statements, failing to maintain proper time
 3 records, and failing to pay all wages owed upon termination, and forcing employees to sign
 4 illegal and abusive "non-compete" agreements.

5 22. Plaintiffs will fully and adequately protect the interests of the Class, and have
 6 retained class counsel who are experienced and competent in both class and employment
 7 litigation. Plaintiffs have no interests that are contrary to or in conflict with those of the Class.

8 23. Plaintiffs know of no difficulty to be encountered in the management of this
 9 action that would preclude its maintenance as a class action.

10 24. The likelihood of individual Class members persecuting separate claims is
 11 remote, and individual members of the Class do not have a significant interest in individually
 12 controlling the prosecution of separate actions. Additionally, the prosecution of separate actions
 13 by individual class members would create a risk of inconsistent and varying adjudications
 14 concerning the subject of this action, which adjudications could establish incompatible standards
 15 of conduct for defendants under the law herein alleged.

16 25. There is a well-defined community of interest between Plaintiffs and the members
 17 of the Class. Questions of law and fact common to the members of the Class predominate over
 18 any questions that may affect only individual members, in that Defendants have acted in a
 19 manner generally applicable to the entire Class. Among the questions of law and fact common
 20 to the Class are:

- 21 a. Whether Defendants unlawfully deducted "assistant charges" from the
- 22 wages of the Class;
- 23 b. Whether Defendants unlawfully deducted "cost of materials" from the
- 24 wages of the Class;
- 25 c. Whether Defendants unlawfully deducted "marketing" from the wages of
- 26 the Class;
- 27 d. Whether Defendants unlawfully deducted "benefits" from the wages of the
- 28 Class;

- 1 e. Whether Defendants made other unlawful deductions from the wages of
- 2 the Class;
- 3 f. Whether Defendants otherwise failed to reimburse the business expenses
- 4 of the Class;
- 5 g. Whether Defendants unlawfully failed to pay overtime to the Class in the
- 6 proper amounts;
- 7 h. Whether Defendants failed to provide Class members proper break
- 8 periods;
- 9 i. Whether Defendants failed to provide Class members proper meal periods;
- 10 j. Whether Defendants failed to keep accurate records showing when Class
- 11 members began and ended each work and meal period;
- 12 k. Whether Defendants failed to provide itemized wage statements to the
- 13 Class members as required by California law;
- 14 l. Whether the non-competition contracts Defendants forced Class members
- 15 to sign are unlawful;
- 16 m. Whether the legal claims presented in this Complaint on behalf of the
- 17 Class have merit;
- 18 n. Whether Defendants' violations of California's labor laws constitute
- 19 unlawful, unfair or fraudulent business practices; and
- 20 o. Whether members of the Class are entitled to relief for Defendants'
- 21 violations of California labor laws and, if so, the proper relief.

22 26. Accordingly, this action should be maintained as a class action.

23 TOLLING OF STATUTE OF LIMITATIONS

24 27. Any applicable statutes of limitations have been tolled by Defendant's continuing,

25 knowing, and active concealment of the facts alleged herein. Despite exercising reasonable

26 diligence, Plaintiff and the Class could not have discovered, did not discover, and were

27 prevented from discovering, the wrongdoing complained of herein.

28 //

**FIRST CAUSE OF ACTION
FOR UNLAWFUL WAGE DEDUCTIONS
(BY PLAINTIFFS AND THE CLASS AGAINST ALL DEFENDANTS)**

28. Plaintiffs, on behalf of themselves and the Class, re-allege and incorporate by reference paragraphs 1 through 27 as if they were set forth herein.

29. California Labor Code section 221 states, "It shall be unlawful for any employer to collect or receive from an employee any part of wages theretofore paid by said employer to said employee."

30. As described above, Defendants regularly deducted amounts from the wages earned by Plaintiffs and other Class members for assistant fees, supplies, and other business and overhead expenses. Those deductions violated Labor Code section 221.

31. Wherefore, Plaintiffs pray for judgment as set forth below.

**SECOND CAUSE OF ACTION
FOR VIOLATION OF LABOR CODE SECTION 450
(BY PLAINTIFFS AND THE CLASS AGAINST ALL DEFENDANTS)**

32. Plaintiffs, on behalf of themselves and the Class, re-allege and incorporate by reference paragraphs 1 through 31 as if they were set forth herein.

33. Labor Code section 450 states that "no employer . . . may compel or coerce any employee . . . to patronize his or her employer, or any other person, in the purchase of any thing of value."

34. As described above, Defendants regularly required Plaintiffs and all the other Class members to purchase products and services from Defendants by way of charges and other deductions. Requiring Plaintiffs and the other Class members to purchase products and services from the Defendants violated Labor Code section 450.

35. Wherefore, Plaintiffs pray for judgment as set forth below.

**THIRD CAUSE OF ACTION
FOR FAILURE TO REIMBURSE BUSINESS EXPENSES
(BY PLAINTIFFS AND THE CLASS AGAINST ALL DEFENDANTS)**

36. Plaintiffs, on behalf of themselves and the Class, re-allege and incorporate by reference paragraphs 1 through 35 as if they were set forth herein.

//

1 37. California Labor Code section 2802 states, "An employer shall indemnify his or
2 her employees for all necessary expenditures or losses incurred by the employee in direct
3 consequence of the discharge of his or her duties, or of his or her obedience to the directions of
4 the employer, even though unlawful, unless the employee, at the time of obeying the directions,
5 believed them to be unlawful." This section prohibits employers from requiring employees to
6 incur unreimbursed business expenses and from passing on the cost of business overhead to
7 employees. Labor Code section 2802 represents a fundamental public policy of the State of
8 California, and the rights created in that section are not waivable.

9 38. As described above, Defendants regularly charged Plaintiffs and other Class
10 members for expenses necessary to the performance of Plaintiffs' duties including assistant fees,
11 materials charges, and other business and overhead expenses. In addition, Defendants failed to
12 reimburse Plaintiffs or other Class members for any other business expenses incurred by the
13 members of the Class. Defendants' conduct violates Labor Code section 2802.

14 39. Wherefore, Plaintiffs pray for judgment as set forth below.

15 **FOURTH CAUSE OF ACTION**
16 **FOR FAILURE TO PAY OVERTIME COMPENSATION**
17 **(BY PLAINTIFFS AND THE CLASS AGAINST ALL DEFENDANTS)**

18 40. Plaintiffs, on behalf of themselves and the Class, re-allege and incorporate by
19 reference paragraphs 1 through 39 as if they were set forth herein.

20 41. California law requires that an employer such as Defendants compensate all non-
21 exempt employees at a rate of one-and-one-half (1 ½) times the regular rate of pay for work
22 performed above eight hours in a workday or above forty (40) hours in a workweek.

23 42. Plaintiffs and members of the Class were scheduled by Defendants to work more
24 than eight hours in a workday and/or forty hours per week, and did in fact work more than eight
25 hours in a workday and/or forty hours per week.

26 43. Plaintiffs and members of the Class are non-exempt employees, and at all relevant
27 times have been and are entitled to be paid overtime compensation for all overtime hours
28 worked.

//

1 44. At all relevant times, Defendants failed and refused to pay overtime premium
2 compensation to the members of the Class for their hours worked in excess of eight hours in a
3 workday or forty (40) hours per week. Defendants also failed to make and keep accurate time
4 records showing when Plaintiffs and the Class began work and ended each work period. This
5 problem is particularly acute with respect to the beginning of the work day and work required
6 "before" a scheduled shift.

7 45. In addition, at all relevant times Defendants unlawfully failed to pay Plaintiffs and
8 the Class the correct overtime premium compensation under California law by miscalculating the
9 regular rate used to calculate overtime pay. The members of the Class are/were paid in part
10 based on commissions and other non-discretionary payments for hours worked that are required
11 by law to be included in the rate used to calculate premium pay. See Labor Code § 200; 29
12 U.S.C. § 207; *Division of Labor Standards Enforcement Policies and Interpretations Manual* §
13 49. Defendants, however, unlawfully calculated overtime premium pay based solely on the
14 hourly "draw" against commission, ignoring commissions and all other forms of wages. As a
15 result, the rate used by defendants was substantially less than the rate actually owed. Defendants
16 reported this incorrect rate to members of the Class as if it were the rate actually owed, thereby
17 concealing their underpayment of overtime from Plaintiffs and the other members of the Class.

18 46. By failing to make and keep accurate time records showing when Plaintiffs and
19 the Class began work and ended each work period, and by failing to compensate Plaintiffs and
20 the Class at a rate of one-and-one-half (1 ½) times the regular rate of pay for work performed
21 above eight (8) hours in a workday or above forty (40) hours in a workweek, Defendants violated
22 California law.

23 47. Wherefore, Plaintiffs pray for judgment as set forth below.

24 **FIFTH CAUSE OF ACTION**
25 **FOR PAYMENT OF SECRET WAGE LOWER THAN DESIGNATED SCALE**
26 **(BY PLAINTIFFS AND THE CLASS AGAINST ALL DEFENDANTS)**

27 48. Plaintiffs, on behalf of themselves and the Class, re-allege and incorporate by
reference paragraphs 1 through 47 as if they were set forth herein.

28 //

49. Labor Code section 223 provides, "Where any statute or contract requires an employer to maintain the designated wage scale, it shall be unlawful to secretly pay a lower wage while purporting to pay the wage designated by statute or contract."

50. Defendants represented to Plaintiffs and to each member of the Class that they were paying proper overtime to the Plaintiffs and members of the Class, while actually paying Plaintiffs and members of the Class less than the rate that was owed as a result of Defendants' intentional miscalculation of the overtime rate. That conduct represents the payment of a secret wage lower than that owed by law in violation of Labor Code section 223.

51. Wherefore, Plaintiffs pray for judgment as set forth below.

**SIXTH CAUSE OF ACTION
FOR FAILURE TO PROVIDE ACCURATE WAGE STATEMENTS
(BY PLAINTIFFS AND THE CLASS AGAINST ALL DEFENDANTS)**

52. Plaintiffs, on behalf of themselves and the Class, re-allege and incorporate by reference paragraphs 1 through 51 as if they were set forth herein.

53. Labor Code section 226(a) requires an employer to "semi-monthly, or at the time of each payment of wages, furnish each of his or her employees . . . an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee . . . [and] (4) all deductions . . .," along with other information.

54. Labor Code sections 226(a) and 226.3 provide for damages and penalties for each violation of Labor Code section 226(a).

55. Defendants failed to provide Plaintiffs and each other member of the Class with the accurate statements required by Labor Code section 226(a) because the itemizations provided by Defendants (1) under-reported the amount of overtime earned by misreporting the regular rate, (2) failed to report all hours worked, and (3) did not list all deductions. Accordingly, Defendants violated Labor Code section 226(a) for Plaintiffs and each member of the Class with respect to every pay period during his or her employment.

56. Wherefore, Plaintiffs pray for judgment as set forth below.

//

//

**SEVENTH CAUSE OF ACTION
FOR FAILURE TO PAY WAGES FOR REST BREAK PERIODS
(BY PLAINTIFFS AND THE CLASS AGAINST ALL DEFENDANTS)**

57. Plaintiffs, on behalf of themselves and the Class, re-allege and incorporate by reference paragraphs 1 through 56 as if they were set forth herein.

58. California law requires an employer to provide an employee ten minutes of duty free "net rest time" for every four hours worked or "major fraction thereof," with the rest period to be available near the middle of the work period, insofar as is practicable.

59. Members of the Class, including Plaintiff, were sometimes required to work through rest breaks or were not given rest breaks at all.

60. Under California law, Defendants are obligated to pay each member of the Class who worked through a rest break or was not provided a proper rest break for every four hours worked at the rate of one hour or regular pay per violation.

61. Wherefore, Plaintiffs pray for judgment as set forth below.

**EIGHTH CAUSE OF ACTION
FOR FAILURE TO PAY WAGES FOR MEAL PERIODS
(BY PLAINTIFFS AND THE CLASS AGAINST ALL DEFENDANTS)**

62. Plaintiffs, on behalf of themselves and the Class, re-allege and incorporate by reference paragraphs 1 through 61 as if they were set forth herein.

63. California law requires an employer to provide an employee with a meal period of not less than thirty minutes for any work period of more than five hours. California law also requires an employer to provide employees working more than ten hours per day a second meal period. Except in specific circumstances not relevant here, unless the employee is relieved of all duties during the meal period, the entire period must be counted as time worked.

64. The nature of the work performed by Plaintiffs and the other Class Members was not such that prevented them from being relieved of duty during their respective meal periods. Nevertheless, members of the Class were sometimes required to work through their meal periods or were not given meal periods at all. Defendants also failed to make and keep accurate time records recording meal periods provided to Plaintiffs and the Class.

//

65. Under California law, Defendants are obligated to pay each member of the Class who worked through a meal period or was not given a proper meal period at the rate of one hour of regular pay per violation.

66. Wherefore, Plaintiffs pray for judgment as set forth below.

**NINTH CAUSE OF ACTION
FOR WAITING TIME PENALTIES UNDER LABOR CODE §203
(BY PLAINTIFFS AND THE CLASS AGAINST ALL DEFENDANTS)**

67. Plaintiffs, on behalf of themselves and the Class, re-allege and incorporate by reference paragraphs 1 through 66 as if they were set forth herein.

68. At the time that Plaintiffs resigned, and those other members of the Class no longer employed by Defendants resigned and/or were terminated, Defendants failed to pay Plaintiffs any of the amounts due as set forth herein. Defendants' failure to pay Plaintiffs and other members of the Class overtime, meal and break time at the time of their resignation and/or termination violates Labor Code sections 201 and 202.

69. Defendants' failure to pay the wages of Plaintiffs and other members of the Class was willful and they are entitled to penalties under Labor Code section 203 which provides that an employee's wages shall continue as a penalty until paid or for a period up to thirty days, whichever is shorter.

70. Wherefore, Plaintiffs pray for judgment as set forth below.

**TENTH CAUSE OF ACTION
ILLEGAL NON-COMPETITION AGREEMENT
(BY PLAINTIFFS AND THE CLASS AGAINST ALL DEFENDANTS)**

71. Plaintiffs, on behalf of themselves and the Class, re-allege and incorporate by reference paragraphs 1 through 70 as if they were set forth herein.

72. During the course of their employment, Plaintiffs and the members of the Class were required to sign written agreements with Defendants that purport to restrict the right to work of Plaintiffs and the other members of the Class. Those agreements provided, in violation of California law: "For six (6) months after the termination of your employment with the Company for whatever reason, you shall not directly or indirectly render hair, beauty, nail, or other services ordinarily provided by a Company Spa/salon, to or for any person, firm,

1 corporation (including self-employment) directly or indirectly involved in the provision of such
 2 services within a 5 mile radius from the home spa where you were employed, unless written
 3 consent by the Company is granted.”

4 73. This requirement, which purports to completely eliminate the ability Plaintiffs and
 5 the other members of the Class from engaging in their vocation, violates California Business and
 6 Professions Code section 16600, which provides that “every contract by which anyone is
 7 restrained from engaging in a lawful profession, trade, or business of any kind is to that extent
 8 void.” Defendants’ contract also violates well established California public policy against
 9 restraint on employment.

10 74. The use of this provision by Defendants is thus a violation of California law and
 11 public policy. The *in terrorem* effect of this illegal contract chills and impairs Plaintiffs and the
 12 other members of the Class’ rights notwithstanding its ultimate unenforceability. Pursuant to
 13 California Code of Civil Procedure 1060, Plaintiffs and the members of the Class are entitled to a
 14 declaration that the non-competition provisions of their employment contracts are invalid and
 15 unenforceable, and to an injunction against Defendants continuing to use such provisions in
 16 current and future contracts in California.

17 75. Wherefore, Plaintiffs pray for judgment as set forth below.

18 **ELEVENTH CAUSE OF ACTION**
 19 **UNFAIR AND UNLAWFUL BUSINESS PRACTICES**
 20 **(BY PLAINTIFFS AND THE CLASS AGAINST ALL DEFENDANTS)**

21 76. Plaintiffs, on behalf of themselves and the Class, re-allege and incorporate by
 22 reference paragraphs 1 through 75 as if they were set forth herein.

23 77. This cause of action is brought pursuant to Business and Professions Code section
 24 17200, et seq.

25 78. The pattern and practice of conduct of Defendants as described above violates
 26 numerous laws and public policies of the State of California. As a result, such conduct
 27 constitutes both an unfair and unlawful business practices in violation of Business and
 28 Professions Code section 17200 et seq.

//

1 79. In committing the unfair and unlawful business practices in violation of Business
2 and Professions Code section 17203, in an amount to be determined at trial. Additionally,
3 Plaintiff seeks restitution of the amounts that Defendants have improperly withheld from her and
4 the Class by virtue of their conduct in violation of that section.

5 80. Wherefore, Plaintiffs pray for judgment as set forth below.

6 WHEREFORE, Plaintiffs, on behalf of themselves and the Class, pray for relief as
7 follows:

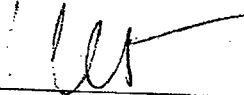
- 8 1. Certification of this action as a class action on behalf of the Class;
- 9 2. Designation of Plaintiffs as representatives of the Class;
- 10 3. Reimbursement of all improper wage deductions and unreimbursed business
11 expenses;
- 12 4. Unpaid overtime premium compensation as provided by California law for
13 overtime hours worked;
- 14 5. Compensation at the rate of one hour of regular pay for each instance in which
15 Plaintiffs or any other Class member worked through a rest break or was not provided a proper
16 rest break for every four hours worked;
- 17 6. Compensation at the rate of one hour of regular pay for each instance in which
18 Plaintiffs or any other Class member worked through a meal period or was not given a proper
19 meal period;
- 20 7. A declaratory judgment that the practices complained of in this complaint are
21 unlawful under California law;
- 22 8. An injunction against Defendants and their officers, agents, successors,
23 employees, representatives, and any and all persons acting in concert with it from engaging in
24 each of the practices complained of in this complaint;
- 25 9. An award of damages, according to proof;
- 26 10. All penalties required by California law;
- 27 11. Attorneys' fees and costs, including expert fees, and expenses as provided by
28 California law;

- 1 12. For prejudgment and post-judgment interest at the maximum legal rate; and
2 13. Such other relief as the Court deems just and proper.

3 Dated: January 31, 2008

KERR & WAGSTAFFE LLP

LAW OFFICES OF MOSS & HOUGH



MARY PATRICIA HOUGH

Attorneys for Plaintiffs
LISA KNIGHT and MARCIE DAVE
on behalf of themselves and those similarly situated

28
KERR
&
WAGSTAFFE
LLP

CASE NUMBER: CGC-08-471683 LISA KNIGHT et al VS. RED DOOR SALONS, INC AN ARIZC

NOTICE TO PLAINTIFF

A Case Management Conference is set for

DATE: JUL-03-2008

TIME: 9:00AM

**PLACE: Department 212
400 McAllister Street
San Francisco, CA 94102-3680**

All parties must appear and comply with Local Rule 3.

CRC 3.725 requires the filing and service of a case management statement form CM-110 no later than 15 days before the case management conference.

However, it would facilitate the issuance of a case management order **without an appearance** at the case management conference if the case management statement is filed, served and lodged in Department 212 twenty-five (25) days before the case management

Plaintiff must serve a copy of this notice upon each party to this action with the summons and complaint. Proof of service subsequently filed with this court shall so state.

ALTERNATIVE DISPUTE RESOLUTION POLICY REQUIREMENTS

IT IS THE POLICY OF THE SUPERIOR COURT THAT EVERY CIVIL CASE PARTICIPATE IN EITHER MEDIATION, JUDICIAL OR NON-JUDICIAL ARBITRATION, THE EARLY SETTLEMENT PROGRAM OR SOME SUITABLE FORM OF ALTERNATIVE DISPUTE RESOLUTION PRIOR TO A MANDATORY SETTLEMENT CONFERENCE OR TRIAL. (SEE LOCAL RULE 4)

Plaintiff must serve a copy of the Alternative Dispute Resolution Information Package on each defendant along with the complaint. All counsel must discuss ADR with clients and opposing counsel and provide clients with a copy of the Alternative Dispute Resolution Information Package prior to filing the Case Management Statement.

[DEFENDANTS: Attending the Case Management Conference does not take the place of filing a written response to the complaint. You must file a written response with the court within the time limit required by law. See Summons.]

Superior Court Alternative Dispute Resolution Coordinator
400 McAllister Street, Room 103
San Francisco, CA 94102
(415) 551-3876

See Local Rules 3.6, 6.0 C and 10 D re stipulation to commissioners acting as temporary judges

EXHIBIT

D

**Alternative Dispute Resolution (ADR)
Program Information Package**

Alternatives to Trial

**There are other ways to
resolve a civil dispute.**

**The plaintiff must serve a copy of the ADR information package
on each defendant along with the complaint. (CRC 201.9(c))**

**Superior Court of California
County of San Francisco**

ADR-1 10/07 (ja)

Page 1

EXHIBIT E

**Exhibit "E"
Page 31**

Introduction

Did you know that most civil lawsuits settle without a trial?

And did you know that there are a number of ways to resolve civil disputes without having to sue somebody?

These alternatives to a lawsuit are known as alternative dispute resolutions (ADR). The most common forms of ADR are mediation, arbitration and case evaluation. There are a number of other kinds of ADR as well.

In ADR, trained, impartial persons decide disputes or help parties decide disputes themselves. These persons are called neutrals. For example, in mediation, the neutral is the mediator. Neutrals normally are chosen by the disputing parties or by the court. Neutrals can help parties resolve disputes without having to go to court.

ADR is not new. ADR is available in many communities through dispute resolution programs and private neutrals.

Advantages of ADR

ADR can have a number of advantages over a lawsuit.

- **ADR can save time.** A dispute often can be resolved in a matter of months, even weeks, through ADR, while a lawsuit can take years.
- **ADR can save money.** Court costs, attorneys fees, and expert fees can be saved.
- **ADR can be cooperative.** This means that the parties having a dispute may work together with the neutral to resolve the dispute and agree to a remedy that makes sense to them, rather than work against each other.
- **ADR can reduce stress.** There are fewer, if any, court appearances. And because ADR can be speedier, and save money, and because the parties are normally cooperative, ADR is easier on the nerves. The parties don't have a lawsuit hanging over their heads for years.
- **ADR encourages participation.** The parties may have more chances to tell their side of the story than in court and may have more control over the outcome.
- **ADR is flexible.** The parties can choose the ADR process that is best for them. For example, in mediation the parties may decide how to resolve their dispute.
- **ADR can be more satisfying.** For all the above reasons, many people have reported a high degree of satisfaction with ADR.

Because of these advantages, many parties choose ADR to resolve a dispute, instead of filing a lawsuit. Even when a lawsuit has been filed, the court can refer the dispute to a neutral before the parties' position harden and the lawsuit becomes costly. ADR has been used to resolve disputes even after a trial, when the result is appealed.

Disadvantages of ADR

ADR may not be suitable for every dispute.

- If ADR is binding, the parties normally give up most court protections, including a decision by a judge or jury under formal rules of evidence and procedure, and review for legal error by an appellate court.
- There generally is less opportunity to find out about the other side's case with ADR than with litigation. ADR may not be effective if it takes place before the parties have sufficient information to resolve the dispute.
- The neutral may charge a fee for his or her services.
- If a dispute is not resolved through ADR, the parties may have to put time and money into both ADR and a lawsuit.
- Lawsuits must be brought within specified periods of time, known as statutes of limitation. Parties must be careful not to let a statute of limitations run out while a dispute is in an ADR process.

ALTERNATIVE DISPUTE RESOLUTION PROGRAMS Of the San Francisco Superior Court

"It is the policy of the Superior Court that every noncriminal, nonjuvenile case participate either in an early settlement conference, mediation, arbitration, early neutral evaluation or some other alternative dispute resolution process prior to a mandatory settlement conference or trial."
(Superior Court Local Rule 4)

This guide is designed to assist attorneys, their clients and self-represented litigants in complying with San Francisco Superior Court's alternative dispute resolution ("ADR") policy. Attorneys are encouraged to share this guide with clients. By making informed choices about dispute resolution alternatives, attorneys, their clients and self-represented litigants may achieve a more satisfying resolution of civil disputes.

The San Francisco Superior Court currently offers three ADR programs for general civil matters; each program is described below:

- 1) Judicial Arbitration
- 2) Mediation
- 3) The Early Settlement Program (ESP) in conjunction with the San Francisco Bar Association.

JUDICIAL ARBITRATION

Description

In arbitration, a neutral "arbitrator" presides at a hearing where the parties present evidence through exhibits and testimony. The arbitrator applies the law to the facts of the case and makes an award based upon the merits of the case. When the Court orders a case to arbitration it is called judicial arbitration. The goal of arbitration is to provide parties with an adjudication that is earlier, faster, less formal, and usually less expensive than a trial. Upon stipulation of all parties, other civil matters may be submitted to judicial arbitration.

Although not currently a part of the Court's ADR program, civil disputes may also be resolved through private arbitration. Here, the parties

voluntarily consent to arbitration. If all parties agree, private arbitration may be binding and the parties give up the right to judicial review of the arbitrator's decision. In private arbitration, the parties select a private arbitrator and are responsible for paying the arbitrator's fees.

Operation

Pursuant to CCP 1141.11 and Local Rule 4, all civil actions in which the amount in controversy is \$50,000 or less, and no party seeks equitable relief, shall be ordered to arbitration. A case is ordered to arbitration after the Case Management Conference. An arbitrator is chosen from the Court's Arbitration Panel. Most cases ordered to arbitration are also ordered to a pre-arbitration settlement conference. Arbitrations are generally held between 7 and 9 months after a complaint has been filed. Judicial arbitration is not binding unless all parties agree to be bound by the arbitrator's decision. Any party may request a court trial within 30 days after the arbitrator's award has been filed.

Cost

There is no cost to the parties for judicial arbitration or for the pre-arbitration settlement conference.

MEDIATION

Description

Mediation is a voluntary, flexible, and confidential process in which a neutral third party "mediator" facilitates negotiations. The goal of mediation is to reach a mutually satisfactory agreement that resolves all or part of the dispute after exploring the significant interests, needs, and priorities of the parties in light of relevant evidence and the law.

Although there are different styles and approaches to mediation, most mediations begin with presentations of each side's view of the case. The mediator's role is to assist the parties in communicating with each other, expressing their interests, understanding the interests of opposing parties, recognizing areas of agreement and generating options for resolution. Through questions, the mediator aids each party in assessing the strengths and weaknesses of their position.

A mediator does not propose a judgment or provide an evaluation of the merits and value of the case. Many attorneys and litigants find that mediation's emphasis on cooperative dispute resolution produces more satisfactory and enduring resolutions. Mediation's non-adversarial approach is particularly effective in disputes in which the parties have a continuing relationship, where there are multiple parties, where equitable relief is sought, or where strong personal feelings exist.

Operation

San Francisco Superior Court Local Court Rule 4 provides three different voluntary mediation programs for civil disputes. An appropriate program is available for all civil cases, regardless of the type of action or type of relief sought.

To help litigants and attorneys identify qualified mediators, the Superior Court maintains a list of mediation providers whose training and experience have been reviewed and approved by the Court. The list of court approved mediation providers can be found at www.sfgov.org/courts. Litigants are not limited to mediators on the court list and may select any mediator agreed upon by all parties. A mediation provider need not be an attorney.

Local Rule 4.2 D allows for mediation in lieu of judicial arbitration, so long as the parties file a stipulation to mediate within 240 days from the date the complaint is filed. If settlement is not reached through mediation, a case proceeds to trial as scheduled.

Private Mediation

The Private Mediation program accommodates cases that wish to participate in private mediation to fulfill the court's alternative dispute resolution requirement. The parties select a mediator, panel of mediators or mediation program of their choice to conduct the mediation. The cost of mediation is borne by the parties equally unless the parties agree otherwise.

Parties in civil cases that have not been ordered to arbitration may consent to private mediation at any point before trial. Parties willing to submit a matter to private mediation should indicate this preference on the Stipulation to Alternative Dispute Resolution form or the Case Management Statement (CM-110). Both forms are attached to this packet.

Mediation Services of the Bar Association of San Francisco

The Mediation Services is a coordinated effort of the San Francisco Superior Court and The Bar Association of San Francisco (BASF) in which a court approved mediator provides three hours of mediation at no charge to the parties. It is designed to afford civil litigants the opportunity to engage in early mediation of a case shortly after filing the complaint, in an effort to resolve the matter before substantial funds are expended on the litigation process. Although the goal of the program is to provide the service at the outset of the litigation, the program may be utilized at anytime throughout the litigation process.

The mediators participating in the program have been pre-approved by the court pursuant to strict educational and experience requirements.

After the filing of the signed Stipulation to Alternative Dispute Resolution form included in this ADR package the parties will be contacted by BASF. Upon payment of the \$200 per party administration fee, parties select a specific mediator from the list of court approved mediation providers. The hourly mediator fee beyond the first three hours will vary depending on the mediator selected. Waiver of the administrative fee based on financial hardship is available.

A copy of the Mediation Services rules can be found on the BASF website at www.sfbar.org, or you may call BASF at 415-782-9000.

Judicial Mediation

The Judicial Mediation program is designed to provide early mediation of complex cases by volunteer judges of the San Francisco Superior Court. Cases considered for the program include construction defect, employment discrimination, professional malpractice, insurance coverage, toxic torts and industrial accidents.

Parties interested in judicial mediation should file the Stipulation to Alternative Dispute Resolution form attached to this packet indicating a joint request for inclusion in the program. A preference for a specific judge may be indicated. The court Alternative Dispute Resolution Coordinator will coordinate assignment of cases that qualify for the program.

Cost

Generally, the cost of Private Mediation ranges from \$200 per hour to \$400 per hour and is shared equally by the parties. Many mediators are willing to adjust their fees depending upon the income and resources of the parties. Any party who meets certain eligibility requirements may ask the court to appoint a mediator to serve at no cost to the parties.

The Mediation Services of the Bar Association of San Francisco provides three hours of mediation time at no cost with a \$200 per party administrative fee.

There is no charge for participation in the Judicial Mediation program.

EARLY SETTLEMENT PROGRAM

Description

The Bar Association of San Francisco, in cooperation with the Court, offers an Early Settlement Program ("ESP") as part of the Court's settlement conference calendar. The goal of early settlement is to provide participants an opportunity to reach a mutually acceptable settlement that resolves all or part of the dispute. The two-member volunteer attorney panel reflects a balance between plaintiff and defense attorneys with at least 10 years of trial experience.

As in mediation, there is no set format for the settlement conference. A conference typically begins with a brief meeting with all parties and counsel, in which each is given an opportunity to make an initial statement. The panelists then assist the parties in understanding and candidly discussing the strengths and weaknesses of the case. The Early Settlement Conference is considered a "quasi-judicial" proceeding and, therefore, is not entitled to the statutory confidentiality protections afforded to mediation.

Operation

Civil cases enter the ESP either voluntarily or through assignment by the Court. Parties who wish to choose the early settlement process should indicate this preference on the status and setting conference statement.

If a matter is assigned to the ESP by the Court, parties may consult the ESP program materials accompanying the "Notice of the Early Settlement Conference" for information regarding removal from the program.

Participants are notified of their ESP conference date approximately 4 months prior to trial. The settlement conference is typically held 2 to 3 months prior to the trial date. The Bar Association's ESP Coordinator informs the participants of names of the panel members and location of the settlement conference approximately 2 weeks prior to the conference date.

Local Rule 4.3 sets out the requirements of the ESP. All parties to a case assigned to the ESP are required to submit a settlement conference statement prior to the conference. All parties, attorneys who will try the case, and insurance representatives with settlement authority are required to attend the settlement conference. If settlement is not reached through the conference, the case proceeds to trial as scheduled.

Cost

All parties must submit a \$250 generally non-refundable administrative fee to the Bar Association of San Francisco. Parties who meet certain eligibility requirements may request a fee waiver. For more information, please contact the ESP Coordinator at (415) 782-9000 ext. 8717.

For further information about San Francisco Superior Court ADR programs or dispute resolution alternatives, please contact:

Superior Court Alternative Dispute Resolution,
400 McAllister Street, Room 103
San Francisco, CA 94102
(415) 551-3876

or visit the Superior Court Website at
http://sfgov.org/site/courts_page.asp?id=3672

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN FRANCISCO**

400 McAllister Street, San Francisco, CA 94102-4514

<p style="text-align: center;">Plaintiff</p> <p style="text-align: center;">v.</p> <p style="text-align: center;">Defendant</p>	<p>Case No. _____</p> <p>STIPULATION TO ALTERNATIVE DISPUTE RESOLUTION</p>
---	---

The parties hereby stipulate that this action shall be submitted to the following alternative dispute resolution process:

- | | | |
|--|---|---|
| <input type="checkbox"/> Private Mediation
<input type="checkbox"/> Binding arbitration
<input type="checkbox"/> Non-binding judicial arbitration
<input type="checkbox"/> BASF Early Settlement Program
<input type="checkbox"/> Other ADR process (describe) _____ | <input type="checkbox"/> Mediation Services of BASF

 | <input type="checkbox"/> Judicial Mediation
Judge _____
Judge _____ |
|--|---|---|

Plaintiff(s) and Defendant(s) further agree as follows:

Name of Party Stipulating _____	Name of Party or Attorney Executing Stipulation _____	Signature of Party or Attorney _____
<input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant <input type="checkbox"/> Cross-defendant		Dated: _____

Name of Party Stipulating _____	Name of Party or Attorney Executing Stipulation _____	Signature of Party or Attorney _____
<input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant <input type="checkbox"/> Cross-defendant		Dated: _____

Name of Party Stipulating _____	Name of Party or Attorney Executing Stipulation _____	Signature of Party or Attorney _____
<input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant <input type="checkbox"/> Cross-defendant		Dated: _____

☐ Additional signature(s) attached

ADR-2 3/06

STIPULATION TO ALTERNATIVE DISPUTE RESOLUTION

CM-110					
ATTORNEY OR PARTY WITHOUT ATTORNEY (<i>Name, State Bar number, and address:</i>)			FOR COURT USE ONLY		
TELEPHONE NO.: E-MAIL ADDRESS (<i>Optional</i>): ATTORNEY FOR (<i>Name</i>):					
FAX NO. (<i>Optional</i>):					
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:					
PLAINTIFF/PETITIONER:					
DEFENDANT/RESPONDENT:					
CASE MANAGEMENT STATEMENT (Check one): <input type="checkbox"/> UNLIMITED CASE <div>(Amount demanded exceeds \$25,000)</div> <input type="checkbox"/> LIMITED CASE <div>(Amount demanded is \$25,000 or less)</div>			CASE NUMBER:		
A CASE MANAGEMENT CONFERENCE is scheduled as follows: Date: _____ Time: _____ Dept.: _____ Div.: _____ Room: _____ Address of court (if different from the address above): _____					

1. **Party or parties (answer one):**
a. ☐ This statement is submitted by party (name):
b. ☐ This statement is submitted jointly by parties (names):
2. **Complaint and cross-complaint (to be answered by plaintiffs and cross-complainants only)**
a. The complaint was filed on (date):
b. ☐ The cross-complaint, if any, was filed on (date):
3. **Service (to be answered by plaintiffs and cross-complainants only)**
a. ☐ All parties named in the complaint and cross-complaint have been served, or have appeared, or have been dismissed.
b. ☐ The following parties named in the complaint or cross-complaint
(1) ☐ have not been served (specify names and explain why not):
(2) ☐ have been served but have not appeared and have not been dismissed (specify names):
(3) ☐ have had a default entered against them (specify names):
c. ☐ The following additional parties may be added (specify names, nature of involvement in case, and the date by which they may be served):
4. **Description of case**
a. Type of case in ☐ complaint ☐ cross-complaint (describe, including causes of action):

PLAINTIFF/PETITIONER:	CASE NUMBER:
DEFENDANT/RESPONDENT:	

CM-110

4. b. Provide a brief statement of the case, including any damages. (If personal injury damages are sought, specify the injury and damages claimed, including medical expenses to date [indicate source and amount], estimated future medical expenses, lost earnings to date, and estimated future lost earnings. If equitable relief is sought, describe the nature of the relief.)

☐ (If more space is needed, check this box and attach a page designated as Attachment 4b.)

5. Jury or nonjury trial

The party or parties request ☐ a jury trial ☐ a nonjury trial (if more than one party, provide the name of each party requesting a jury trial):

6. Trial date

- a. ☐ The trial has been set for (date):
 b. ☐ No trial date has been set. This case will be ready for trial within 12 months of the date of the filing of the complaint (if not, explain):
 c. Dates on which parties or attorneys will not be available for trial (specify dates and explain reasons for unavailability):

7. Estimated length of trial

The party or parties estimate that the trial will take (check one):

- a. ☐ days (specify number):
 b. ☐ hours (short causes) (specify):

8. Trial representation (to be answered for each party)

The party or parties will be represented at trial ☐ by the attorney or party listed in the caption ☐ by the following:

- a. Attorney:
 b. Firm:
 c. Address:
 d. Telephone number:
 e. Fax number:
 f. E-mail address:
 g. Party represented:

☐ Additional representation is described in Attachment 8.

9. Preference

☐ This case is entitled to preference (specify code section):

10. Alternative Dispute Resolution (ADR)

- a. Counsel ☐ has ☐ has not provided the ADR information package identified in rule 3.221 to the client and has reviewed ADR options with the client.
 b. ☐ All parties have agreed to a form of ADR. ADR will be completed by (date):
 c. ☐ The case has gone to an ADR process (indicate status):

PLAINTIFF/PETITIONER:	CASE NUMBER: CM-110
DEFENDANT/RESPONDENT:	

10. d. The party or parties are willing to participate in (check all that apply):

- (1) ☐ Mediation
 (2) ☐ Nonbinding judicial arbitration under Code of Civil Procedure section 1141.12 (discovery to close 15 days before arbitration under Cal. Rules of Court, rule 3.822)
 (3) ☐ Nonbinding judicial arbitration under Code of Civil Procedure section 1141.12 (discovery to remain open until 30 days before trial; order required under Cal. Rules of Court, rule 3.822)
 (4) ☐ Binding judicial arbitration
 (5) ☐ Binding private arbitration
 (6) ☐ Neutral case evaluation
 (7) ☐ Other (specify):

- e. ☐ This matter is subject to mandatory judicial arbitration because the amount in controversy does not exceed the statutory limit.
 f. ☐ Plaintiff elects to refer this case to judicial arbitration and agrees to limit recovery to the amount specified in Code of Civil Procedure section 1141.11.
 g. ☐ This case is exempt from judicial arbitration under rule 3.811 of the California Rules of Court (specify exemption):

11. Settlement conference

- ☐ The party or parties are willing to participate in an early settlement conference (specify when):

12. Insurance

- a. ☐ Insurance carrier, if any, for party filing this statement (name):
 b. Reservation of rights: ☐ Yes ☐ No
 c. ☐ Coverage issues will significantly affect resolution of this case (explain):

13. Jurisdiction

Indicate any matters that may affect the court's jurisdiction or processing of this case, and describe the status.

- ☐ Bankruptcy ☐ Other (specify):

Status:

14. Related cases, consolidation, and coordination

- a. ☐ There are companion, underlying, or related cases.

(1) Name of case:

(2) Name of court:

(3) Case number:

(4) Status:

- ☐ Additional cases are described in Attachment 14a.

- b. ☐ A motion to ☐ consolidate ☐ coordinate will be filed by (name party):

15. Bifurcation

- ☐ The party or parties intend to file a motion for an order bifurcating, severing, or coordinating the following issues or causes of action (specify moving party, type of motion, and reasons):

16. Other motions

- ☐ The party or parties expect to file the following motions before trial (specify moving party, type of motion, and issues):

PLAINTIFF/PETITIONER:	CASE NUMBER: CM-110
DEFENDANT/RESPONDENT:	

17. Discovery

- a. ☐ The party or parties have completed all discovery.
- b. ☐ The following discovery will be completed by the date specified (*describe all anticipated discovery*):

<u>Party</u>	<u>Description</u>	<u>Date</u>
--------------	--------------------	-------------

- c. ☐ The following discovery issues are anticipated (*specify*):

18. Economic Litigation

- a. ☐ This is a limited civil case (i.e., the amount demanded is \$25,000 or less) and the economic litigation procedures in Code of Civil Procedure sections 90 through 98 will apply to this case.
- b. ☐ This is a limited civil case and a motion to withdraw the case from the economic litigation procedures or for additional discovery will be filed (*if checked, explain specifically why economic litigation procedures relating to discovery or trial should not apply to this case*):

19. Other Issues

- ☐ The party or parties request that the following additional matters be considered or determined at the case management conference (*specify*):

20. Meet and confer

- a. ☐ The party or parties have met and conferred with all parties on all subjects required by rule 3.724 of the California Rules of Court (*if not, explain*):

- b. After meeting and conferring as required by rule 3.724 of the California Rules of Court, the parties agree on the following (*specify*):

21. Case management orders

Previous case management orders in this case are (*check one*): ☐ none ☐ attached as Attachment 21.

22. Total number of pages attached (*if any*): _____

I am completely familiar with this case and will be fully prepared to discuss the status of discovery and ADR, as well as other issues raised by this statement, and will possess the authority to enter into stipulations on these issues at the time of the case management conference, including the written authority of the party where required.

Date: _____

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY)

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY)

☐ Additional signatures are attached

CM-110 (Rev. January 1, 2007)

CASE MANAGEMENT STATEMENT

Page 4 of 4



Superior Court of California County of San Francisco

HON. DAVID BALLATI
PRESIDING JUDGE

Judicial Mediation Program

JENIFFER B. ALCANTARA
ADR PROGRAM ADMINISTRATOR

The Judicial Mediation program offers mediation of complex civil litigation by a San Francisco Superior Court judge familiar with the area of the law that is the subject of the controversy. Cases that will be considered for participation in the program include, but are not limited to professional malpractice, construction, employment, insurance coverage disputes, mass torts and complex commercial litigation. Judicial mediation offers civil litigants the opportunity to engage in early mediation of a case shortly after filing the complaint in an effort to resolve the matter before substantial funds are expended. This program may also be utilized at anytime throughout the litigation process. The panel of judges currently participating in the program includes:

The Honorable David J. Ballati
The Honorable Anne Bouliane
The Honorable Ellen Chaitin
The Honorable Robert L. Dondero
The Honorable Ernest H. Goldsmith
The Honorable Harold E. Kahn
The Honorable Patrick J. Mahoney
The Honorable Tomar Mason

The Honorable James I. McBride
The Honorable Kevin M. McCarthy
The Honorable John E. Munter
The Honorable Ronald Quidachay
The Honorable A. James Robertson, II
The Honorable John K. Stewart
The Honorable Mary E. Wiss

Parties interested in judicial mediation should file the Stipulation to Alternative Dispute Resolution form attached to this packet indicating a joint request for inclusion in the program and deliver a courtesy copy to Dept. 212. A preference for a specific judge may be indicated. The court Alternative Dispute Resolution Program Administrator will facilitate assignment of cases that qualify for the program.

Note: Space is limited. Submission of a stipulation to judicial mediation does not guarantee inclusion in the program. You will receive written notification from the court as to the outcome of your application.

Superior Court Alternative Dispute Resolution
400 McAllister Street, Room 103, San Francisco, CA 94102
(415) 551-3876

10/07 (ja)

1 John Swenson (SBN 224110)
 2 STEPTOE & JOHNSON LLP
 2121 Avenue of the Stars
 Suite 2800
 3 Los Angeles, CA 90067
 Phone: 310.734.3200
 4 Fax: 310.734.3300
 Email: jswenson@steptoe.com

5 Attorneys for Defendant Red Door Salons, Inc.

7 UNITED STATES DISTRICT COURT
 8 NORTHERN DISTRICT OF CALIFORNIA

9 LISA KNIGHT and MARCIE DAVE, on)
 behalf of themselves and all others similarly)
 10 situated,)

11 Plaintiffs,)

12 vs.)

13 RED DOOR SALONS, INC., an Arizona)
 Corporation and DOES 1 through 25,)
 14 inclusive,)

15 Defendants.)

Case No. _____

(San Francisco County Superior Court
 Case No. CGC-08-471683)

**DECLARATION OF SUSAN HAAS
 IN SUPPORT OF NOTICE OF
 REMOVAL PURSUANT TO 28
 U.S.C. §§ 1332(a), (d), 1441 and 1446**

Action Filed: January 31, 2008

16 **STATE OF ARIZONA**)

) ss.

18 **COUNTY OF MARICOPA**)

19 I, Susan Haas, declare and state as follows:
 20

21 1. I am employed by Elizabeth Arden Spas, LLC as the Director of Benefits and
 22 HRIS ("Human Resource Information Systems") in Phoenix, Arizona. Red Door Salons, Inc.
 23 ("Red Door") is a wholly-owned subsidiary of Elizabeth Arden Spas, LLC. I am a custodian of
 24 records pertaining to benefits and human resources matters for Red Door. I have personal
 25 knowledge of the foregoing, or knowledge based upon corporate records which are within my
 26

27 **EXHIBIT F**

2. I am informed and believe Plaintiffs have filed a Complaint against Red Door in which they seek, among other things, payment for wages and overtime they allegedly worked and for which Red Door allegedly did not pay them.

3. Red Door was at the time of the filing of this action, and remains, a corporation incorporated under the laws of the State of Arizona with its principal place of business in Arizona.

4. During the entire course of their employment with Red Door, Plaintiffs were employed in the State of California. Plaintiff Lisa Knight provided Red Door with addresses located in Concord and San Francisco, California as the location at which she elected to receive communications from Red Door during her employment. Plaintiff Marcie Dave provided Red Door with an address located in Millbrae, California as the location at which she elected to receive communications from Red Door during her employment.

5. I have reviewed Red Door's corporate records dating back to 2004, and have determined the following:

- a. In 2004, Lisa Knight's gross income was approximately \$21,557.38.
- b. In 2005, Lisa Knight's gross income was approximately \$21,054.56.
- c. In 2006, Lisa Knight's gross income was approximately \$24,940.45.
- d. During her tenure at Red Door, Lisa Knight was paid bi-weekly.
- e. The amount of revenue Lisa Knight generated in 2007 was approximately \$44,250.47.
- f. Red Door has employed approximately 79 different "hair stylists, aestheticians, masseuses, or any similar commissioned workers" at its salon located at 126 Post Street, in the city of San Francisco, California, since 2004.
- g. Red Door has employed over 100 different "hair stylists, aestheticians, masseuses, or any similar commissioned workers" in the State of California, since 2004.

1 I declare under penalty of perjury under the laws of the State of Arizona and the United
2 States of America that the foregoing is true and correct.

3
4 Executed this 18th day of March, 2008 in Phoenix, Arizona.

5
6 Susan Haas
7 Susan Haas

8
9 SUBSCRIBED AND SWORN TO before me this 18 day of March, 2008.

10
11 [Signature]
12 Notary Public

13 My Commission Expires:

14 3/15/2010

